

CAAAC MEETING NOTES 11/7/08

Compiled by Oline Barta

ATTENDEES: : Don Quander, *Holland and Hart, LP*, Dexter Busby, *Montana Refining Company*, Hal Robbins, *Bison Engineering*, Gordon Criswell, Jim Parker, Mark Lambrecht and Ken Morrison, *PPL Montana*, Gail Abercrombie, *Devon Energy*, Greg Brown, *CHS*, *Gary Forrester*, *MDU*, Jackie Flikkema, *Knife River*, Joe Lierow, *Exxon Mobil* and Kathy Dolan, *US EPA*, via conference phone. DEQ attendees were: Bonnie Rouse, Eric Merchant, Dave Klemp, Tina Engel, Chuck Homer, Vickie Walsh, Debbie Skibicki, Dave Aguirre, Mark Peterson, Deb Wolfe and Oline Barta. (In the following notes, names of CAAAC members asking questions will be bolded.)

1. INTRODUCTIONS/WELCOME: At 10:05 a.m., Eric Merchant welcomed the attendees to the meeting and asked that they introduce themselves. He said that Vickie Walsh would address the first agenda item

II. SUMMARY OF RELATED ACTIONS FROM 10/3/08 BER MEETING: Vickie Walsh gave an update of contested case actions. She said SME had been remanded back to the Department for a PM 2.5 analysis and the draft version of that was out in the beginning of October and the comment period closed this past Wednesday. There was an over file to District Court regarding CO₂ and we will be moving forward with that. She also said that Thompson River Power was remanded to work on a startup and shutdown BACT analysis which we are drafting now. We had an over filing from the court on the BER's decision not to include in the proceedings the NSR status of the facility. Vickie also mentioned two older actions: The refinery Title V appeal of CHS reached a settlement. She noted we have a signed court order now and will now be able to issue that document. Vickie said the Exxon appeal is pretty well along in the negotiation stage. Conoco proposed an amendment to their permit for similar changes. **Don Quander** asked whether the "over filing" on SME referred to third party lawsuits as opposed to actions by the EPA. Vickie said it did.

Deb Wolfe talked about rules changes. The annual Fee and Incorporation by Reference (IBR) rule received final adoption on October 23. Deb stated that we have initiated a new rule to keep the rules in line with a change the last legislature made exempting hay grinders from air pollution permits. Affected rules include ARM 17.8.308 and ARM 17.8.744. Another initiated rule separates Montana Air Quality Permits and Title V permits so that they will not have to be submitted concurrently. Those references are ARM 17.8.1205 and ARM 17.8.504. Another change will be initiated December 5, concerning removal of 40 CFR 60, Subpart HHHH mercury regulations from the IBR rule. **Don Quander** had some concerns as to whether permit shields may be lost in this process in the case of Title V renewals that may overlap the preconstruction permit update. Vickie Walsh stated she did not think there will be a problem. The ability to submit concurrent applications is not being eliminated. Individual written requests for shields are also an option. **Don** also wanted to clarify that there would be two separate filing fees now instead of one. He was told that was the case. He also asked if the Department anticipated more changes in Title V permits under this new procedure or if changes would still wait for renewal. Debbie Skibicki responded that less permitting changes should occur since the equipment will be actually existing and operating when the Title V permit is drafted. Chuck Homer noted that a public hearing will be coming up Tuesday, November 25 for anyone who would like to comment on these rule changes.

III. AIR FEE BUDGET PROPOSALS FOR FY 2010 AND 2011. Eric Merchant acknowledged that the budget proposals were an important consideration for the group and turned the meeting over to Tina Engel who gave a Power Point presentation which is also available on the CAAAC webpage. She discussed the Air Quality program structure and activities and followed that with the total base appropriations and decision packages for FY 2010 and 2011. The total appropriations increase over FY09 was estimated to be 28.3% for FY10 and 29.6% for FY11. The Department will request three decision packages, one for air regulatory assistance contracts, one for student intern funding and another for air online permitting and compliance reporting. Tina explained the fee-setting process and what factors were considered. The best estimate, she said, for FY10 cost of emissions per ton was \$36-\$40 and an administrative fee of \$800.

Dave Klemp added a little more information by saying that in light of the difficult current financial situation, the Department modified its decision package request by eliminating requests for an additional FTE and two vehicles for outlying offices. This was not because these things were not really needed, but because we do not take lightly the burden our fees place on facilities. The air regulatory assistance package provides for contracted services instead of having additional staff. He said we are getting good benefits from the interns, but have no funds allocated to pay them at this time. Dave reiterated that we do not take the fee increase lightly. Chuck Homer emphasized that a year ago when we started this process, the economic situation was very different.

Jim Parker requested that Tina's presentation be posted on the internet and was assured that it would be. He also asked if the Department knew why the online reporting package was rejected during that previous legislative session. Chuck Homer responded that we did not know. **Dexter Busby** asked for a graph of the increase over the last 5 years. Chuck responded that we could do that and it would look like a "hockey stick" with this year being the highest. **Dexter** also asked where Montana's fees were in comparison to other states. Chuck said it is hard to compare states since they all have different fee systems. Dave Klemp said that Utah was at \$48 while South Dakota was only now going over \$7. He said sometimes other states have much higher application fees. **Dexter** would like to see a state fee comparison between states posted on the DEQ website. **Don Quander** requested a comparison between emissions tonnage amounts over the last five years as well. He would like to see how much the tonnage has changed. Chuck responded that we are using the 2007 figures for the current calculations and that we don't anticipate significant changes in the 2008 numbers.

Don Quander commented that companies have some support for DEQ budgetary expenses especially for permitting. He asked about our current situation, what Air Resources needed and whether we could get more general funds. Chuck Homer responded that we have made good progress in recruitment and retention and have almost a full staff. Judy Hanson explained that the 2007 legislature responded to serious DEQ understaffing, directing us to fix the problem. We did salary surveys and looked at the markets. We couldn't use the 2008 market figures and stay within our appropriations so we went halfway between 2006 and 2008 for across the board raises. Within the permitting division that is costing an additional million dollars. The permitting budget is \$26 million. To help pay for its portion of the increases, ARMB has had to leave a couple of positions open. Difficult choices have to be made trimming back other expenditures as well. The new salaries were adopted in June to be included next year's budget. She reported that Interim Committees were excited to see our vacancies drop from 20% to 7%.

Dave Klemp stated that we are in a streamlining process and may eventually be able to reduce staff, but to be successful, we have to have good staff especially with the controversy that surrounds some of the permits done in the last seven years. **Don Quander** asked how the Guidon process was going. Vickie Walsh reported that we are working on the Title V process, developing operating procedures. She said we have a wonderful systems analyst who is working on automating the process and we will do the Title

V changes all at once. We will apply Guidon principles to other areas. Compliance will be making changes. We have saved a lot of paper and admin support time which is being put to other uses. Dave Klemp requested that companies let us know how we are doing and if they have noticed changes. He noted that Guidon is being used by a number of other agencies. **Don** wondered about potential bottlenecks that may hold up the process such as the MEPA EIS process. Dave Klemp acknowledged that some challenges are beyond our control. **Dexter Busby** asked what amount of time ARMB spends defending permits rather than producing them. Dave said that we spend a lot of time on a few permits. Problems like SME and TRP have had can take one FTE two to three months with help from others in the Department. Remands are very time consuming. **Don Quander** also asked what part of the fee increase might be attributed to new requirements from climate change issues. Dave offered to deal with this question during the additional business section of the agenda.

IV. OIL AND GAS REGISTRATION RULE DEVELOPMENT. Eric Merchant brought up the next item on the agenda and turned the meeting over to Mark Peterson from the Oil and Gas Registration section who explained that last year a company approached the Department requesting that prime-mover engines be registered instead of permitted. They believed that these engines were registration eligible. The Department determined that prime mover engines did meet the definition of a registration eligible facility and that they were inadvertently omitted under the registration process. ARMB has drafted a rule modification to incorporate the proper emission limits and testing requirements. Mark said he would be happy to answer questions. Chuck Homer commented that we are intending to get an interested party group together for a stakeholder meeting. The Montana Petroleum Association will be our outreach organization helping with this Dave Aguirre said and he hoped for a March rule initiation date.

V. PROMPT DEVIATION REPORTING. Eric Merchant moved on to the next agenda item, a permitting issue. Lead permitter, Debbie Skibicki explained that EPA has requested that Montana redefine “prompt deviation reporting” as applied in Montana’s title V operating permit program to be consistent with other states. The Title V permit refers to “at most 6 months” as the time frame to be used (17-8-1212) while the Malfunction Rule requires a written response within 7 days (17-8-110). The Department did not feel a rule change was needed because of the wording in MCA, but during the next round of Title V renewals, we would move forward with a new definition of “prompt.” Debbie said that ARMB did not intend to surprise anyone with this change so we are introducing it now. Any comments or questions can be directed to her. She said we received the final EPA report audit on September 29. We are working on this issue, a database issue and an issue involving visual surveys.

Don Quander mentioned that he had heard more concerns from industry officials on this issue than any other. People are concerned about being able to meet a proposed 7-day reporting requirement. There are pragmatic considerations. Sometimes it takes several days to figure out whether or not there has been a deviation. Sometimes reports are later withdrawn. He also felt that the Title V “6 month reporting period” had become “established policy” and a rule change would be required to alter it. Don related that many in the industry felt that the new definition would be unduly burdensome.

Vickie Walsh commented that in other states the number of petitions are increasing and petition processes can be very long and resource intensive. She thought that EPA was trying to help Montana avert some of these petition problems by making some minor changes now. She said the Department was willing to work with companies and could also create a form for easier reporting. Vickie said she felt that the current ARM language of “at least every 6 months” provided more flexibility than a rule change would. Debbie Skibicki suggested that the date used could be the date of discovery of the deviation. Working together with the companies, she thought we could come up with some acceptable time frame. Vickie said the Department was holding about 16 Title V renewals to put out with the new definition for “prompt deviation reporting.” **Don Quander** wondered if EPA Region 8 planned to make this a required change, but Kathy Dolan had been disconnected from the conference call and could not respond.

More discussion ensued as to what EPA may require and the public concern expressed in petitions that is fueling the change. Vickie thought that the Department would be required to explain for each permit why we were only requiring a “less than 6 month reporting period.” Don suggested that there may be different categories of deviations. **Dexter Busby** commented that even a missing signature on a report is considered a deviation. Chuck Homer thought that companies know what is important and that we need to provide an easy way to report those important deviations. Vickie said that we may then allow companies to refer back to the deviation form in semi-annual reports. **Jim Parker** asked how ARMB would go about receiving comments. Vickie Walsh thought we could get together an email group or a conference call. **Jim** suggested that the Department send the language to CAAAC members for comment. **Don Quander** advised ARMB to keep EPA informed on how we are working on this issue and what the response has been.

VI. BOILER MACT, 40 CFR 63, SUBPART DDDDD. Eric Merchant moved on the last permitting item on the agenda by asking Vickie Walsh to provide an update on the status of the vacated Boiler MACT. She said the question was “whether the MACT hammer had fallen.” We have nothing in writing yet, but EPA has indicated verbally that the MACT hammer has fallen. However, they do not yet have the authority in their rules to require submission of case by case MACT. We are just going to continue as we have been doing and wait and see what happens. Vickie asked the attendees to let us know if they see anything from EPA on this matter in writing. Debbie Skibicki added that we are taking these references out of the permits as they are updated.

VII. ADDITIONAL BUSINESS. Eric Merchant reminded the group that we had the greenhouse gas/climate change issue that was postponed earlier for additional business. Dave Klemp indicated he was happy to talk about it, but admitted that he had more questions than answers. He said Montana was a non-reporting member of the Climate Registry and Montana was also a member of the Western Climate Initiative. He thought there was some expected legislation from those members in terms of reporting greenhouse gas emissions. ARMB has been directed to do regular business while the Air Energy & Pollution Prevention Bureau (AEPPB) has been charged with climate change measures. We have not been given direction to develop a greenhouse gas permitting program. Dave said he was not sure we would get the regulatory fees if CO₂ became a regulated pollutant. We are expecting greenhouse gas bills to be introduced in upcoming legislative session, but we don’t know what position the agency will have on them. Paul Cartwright works for both the Governor’s Office and AEPPB. He is the liaison between them. Dave suggested Lou Moore may have more information, but does not believe she has been given a lot of direction either. **Don Quander** commented that he was sure ARMB would be asked about possible fees, permitting programs, staffing costs, etc. during the upcoming legislature. Dave said we will work closely with Lou Moore. It also depends on what EPA will do. If CO₂ becomes a regulated air pollutant, PSD applies. Dave wondered if the Clean Air Act would be appropriate to deal with climate change. **Greg Brown** asked whether EPA was developing a reporting system. Dave had seen a public notice for proposed rule making. **Jim Parker** heard that EPA had missed a September deadline on proposed rule making.

A discussion followed as to whether or not CAAAC members and ARMB staff would be too busy to have a CAAAC meeting during the upcoming legislative session. Chuck Homer suggested setting a meeting date for early to mid February to discuss rule making considerations which may come up. Others comments were to try to avoid legislative meeting days and that we could cancel a meeting if it wasn’t needed. Eric Merchant asked for other business. **Don Quander** asked for a brief update on FIP and Regional Haze and if the state was going to be taking some of these programs back. Dave Klemp said we may at some point in the future, but since we lost funding we have not been involved with Regional Haze. Don thought that some companies would prefer to have the state implement the program. Chuck Homer said that from a permitting perspective as these requirements are put into place they will be applicable requirements as far as Title V is concerned. Eric thanked the attendees and closed the meeting at 1:05 p.m.